OFFICE OF THE GENERAL COUNSEL

09 December 2024

SEC OGC Opinion No. 24-41
Re: Entities engaged in Mass Media and Advertising; Foreign Ownership Restrictions

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Attention: ATTY. JESUS M. DISINI, JR.

Dear Atty. Disini:

This refers to your letter[1] requesting the Commission's opinion on whether your client, Pinoy Internet Ventures Online, Inc. (PIVOI or Corporation), is governed by restrictions on foreign ownership of mass media or advertising.

As stated in your letter, PIVOI is a domestic corporation whose primary purpose is as follows:

> "A. The primary purpose of this corporation is to develop and/operate internet-based or online applications or systems which can be used for personal entertainment, information, communication or business purposes; and
> B. The corporation shall have all the express powers of a corporation as provided for under Section 36 of the Corporation Code of the Philippines."

You likewise stated that PIVOI's business is the operation of a website, property24.com.ph, with which its customers, whether individuals or companies, "upload content, including ownership details, terms of contract, and other related or ancillary information, pertaining to properties they intend to sell or rent out to the public." In short, it is engaged in the business of providing a platform where user-generated content ("UGC") is uploaded and made available to internet users.

You also disclosed that PIVOI contemplated increasing its authorized capital stock to expand its business and that foreign investors expressed their interest, however, the restrictions on foreign ownership became an issue; hence, your query.

You submit that PIVOI is neither a mass media nor an advertising company, and therefore, is not subject to the limitations set by the 1987 Constitution pertaining to foreign ownership and management.

In support of your position, you posit that internet platforms are fundamentally different from Traditional Mass Media, pointing to the latter's two distinct functions: (a) they control the medium through which communication is made to the public and (b) they control what information is being disseminated to the public. The first one involves control over the infrastructure of the medium whereas the second involves editorial control over the content communicated over media. Therefore, internet-based platforms

[1] Dated 01 February 2016.

like PIVOI should not be treated as mass media as they do not exercise any editorial control over the content hosted thereon. You argue that because of the absence of editorial control or even the practical ability to control, internet-based platforms are in no position to set standards, ideals, and aims of the masses. You cite Republic Act ("RA") No. 8792, otherwise known as the E-Commerce Act, which shields service providers from civil and criminal liability over content that it has passively hosted.

You further submit that the current opinions of the Commission are inapplicable in the present environment where information and communications technologies (ICT) have blurred the lines between traditional service providers such as telecommunications companies. As an example, you argue that since internet traffic runs through the infrastructure of telecommunications companies, they can be considered as mass media. However, you state that this would be legally unsound as it has been widely accepted that the inability of telecommunications companies to control the content distributed through their infrastructure means they are not mass media. Further, you posit that the present opinions regarding mass media unduly hinder investment in Electronic Commerce.

Finally, you stated in your letter that the business of PIVOI is also not advertising as the corporation engages the services of an internet "ad network," which uses technologies such as cookies, to select which advertisements are displayed on the website. Hence, in the same way that PIVOI does not exercise control over the UGC, it also does not control the advertising content and thus is not subject to equity restraints.

From the foregoing, you now seek confirmation of your position.

A. Mass Media: Definition and Nature.

Section 1 of Presidential Decree ("P.D.") No. 1018, which was enacted in the year 1976, and which prescribes limits on the ownership and management of mass media to citizens of the Philippines and for other purposes, defines ***mass media***, to *wit:*

> Section 1. The term "mass media" refers to the print medium of communication, which includes all newspapers, periodicals, magazines, journals, and publications **<u>and all advertising therein, and billboards, neon signs and the like</u>**, and the broadcast medium of communication, which includes radio and television broadcasting in all their aspects and all other cinematographic or radio **<u>promotions and advertising.</u>**[2]

In this connection, **the Department of Justice ("DOJ") had opined that the main feature of undertaking in the business or activity of mass media is when one engages in the dissemination of information and ideas to the public or a portion thereof.**[3]

Moreover, under Section 4(a) of R.A. 7394, otherwise known as the Consumer Act of the Philippines, in the area of advertising and promotion of consumer products and goods, mass media refers to any means or methods used to convey advertising messages to the public such as television, radio, magazines, cinema, **billboards**, posters, streamers, handbills, leaflets, mails **and the like.**[4]

Further, Section 4 (f) of R.A. No. 9211, otherwise known as the Tobacco Regulation Act of 2003, defines mass media as follows:

> Section 4 (f). "Mass Media"—refers to any medium of communication designed to reach a mass of people. For this purpose, mass media includes print media such as, but not limited to, newspapers, magazines, and publications; broadcast media such as, but not limited to radio, television, cable television, and cinema; electronic media such as but not limited to the **<u>internet</u>**.[5]

Recognizing the evolution and development of digital communication technology, the Commission opined,[6] to wit:

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[2] Emphasis and underscoring supplied.
[3] DOJ Opinion No. 120, s. 1982 dated June 30, 1982 addressed to the Bureau of Employment Services, Ministry of Labor and Employment.
[4] Section 4 (a) of R.A. No. 7394, otherwise known as the Consumer Act of the Philippines promulgated on April 13, 1992.
[5] Emphasis and underscoring supplied.
[6] SEC-OGC Opinion 14-06 dated 08 May 2014, addressed to Castillo Laman Tan Pantaleon & San Jose Law Firm.

With the continuing evolution and proliferation of digital communication technology, i.e. internet and mobile technology, individuals are now exposed to information that are previously restricted to a select group, making them susceptible to the influence of modern mass media techniques such as advertising and propaganda. Thus, the internet and mobile technology have become a recognized platform for mass media.

Of relevance in the progression of regulating mass media is the case of *Rappler, Inc., v. Bautista,*[7] where the Supreme Court highlighted the internet as an expansion of mass media from traditional print, radio, and television, *viz:*

The presidential and vice-presidential debates are held primarily for the benefit of the electorate to assist the electorate in making informed choices on election day. Through the conduct of the national debates among presidential and vice-presidential candidates, the electorate will have the "opportunity to be informed of the candidates' qualifications and track record, platforms and programs, and their answers to significant issues of national concern." ***The political nature of the national debates and the public's interest in the wide availability of the information for the voters' education certainly justify allowing the debates to be shown or streamed in other websites for wider dissemination, in accordance with the MOA.***

Therefore, the debates should be allowed to be live streamed on other websites, including petitioner's, as expressly mandated in Part VI (C), paragraph 19 of the MOA. The respondent, as representative of the COMELEC which provides over-all supervision under the MOA, including the power to "resolve issues that may arise among the parties involved in the organization of the debates," should be directed by this Court to implement Part VI (C), paragraph 19 of the MOA, which allows the debates to be shown or live streamed unaltered on petitioner's and other websites subject to the copyright condition that the source is clearly indicated.[8]

This recognition was echoed by Justice Leonen in his concurring opinion in the same case, to wit:

Article II, Section 24 of the Constitution states that "[t]he State recognizes the vital role of communication and information in nation building." Article III, Section 7 provides that "[t]he right of the people to information on matters of public concern shall be recognized." These provisions create a constitutional framework of opening all possible and available channels for expression to ensure that information on public matters have the widest reach. **In this age of information technology, media has expanded from traditional print, radio, and television. Internet has sped data gathering and multiplied the types of output produced**. The evolution of multimedia introduced packaging data into compact packets such as "infographics" and "memes." **Many from this generation no longer listen to the radio or watch television, and instead are more used to live streaming videos online on their cellular phones or laptops.** Social media news feeds allow for real-time posting of video excerpts or "screen caps," and engaging comments and reactions that stimulate public discussions on important public matters such as elections.[9]

B. SEC interpretation of Mass Media.

Consistent with the foregoing, the Commission opined ***in SEC Opinion 12-16 dated 13 September 2012 addressed to Puno & Puno Law Offices*** that a corporation engaged in the operation of a platform on the internet with the purpose of increasing the sales of a particular product or service is mass media,[10] thus:

To determine the extent of foreign participation in the subject corporation, it is necessary to ascertain whether the corporation is an advertising agency or a mass media entity. Thus:

x x x Advertising agencies do not actually have to disseminate the materials they prepare as they have to utilize or avail of the facilities of mass media, i.e., newspapers, radio, television, etc., for this purpose. Advertising agencies falling within this concept are not mass media, considering that they do not operate or control any medium of communication designed to reach or influence the masses, although the activities of such agencies by their nature, are closely related to those of mass media.

However, where the advertising agency **actually disseminates information, or operates, controls, or otherwise engages in the business of mass media, a specific example of which is an outdoor advertising firm which sells billboard space to advertisers**, then such advertising agencies would fall within the purview of the constitutional limitation.

Thus, if the corporation is engaged in the operation of a voucher platform on the internet with the purpose of increasing the sales of a particular product or service, it, in effect, disseminates information to the general public through the internet. Hence, it may be considered a mass media entity. Consequently, the entity must be wholly owned

[7] G.R. No. 222702. April 5, 2016. See the Concurring Opinion of Justice Leonen.
[8] Emphasis, underscoring and italics supplied.
[9] Emphasis and underscoring supplied.
[10] SEC Opinion 12-16 dated 13 September 2012 addressed to Puno & Puno Law Offices.

by Filipino citizens, in compliance with the requirement of paragraph 1, Section 11, Article XVI of the 1987 Constitution and List A(1) of Executive Order Number 858.[11]

This was subsequently affirmed by SEC Opinion No. 14-06 ("Komli Opinion"),[12] where the Commission discussed the use of digital platforms in order to sell products, to wit:

"With the continuing evolution and proliferation of digital communication technology, *i.e.*, internet and mobile technology, individuals now are exposed to information that are previously restricted to a select group, making them susceptible to the influence of modern mass media techniques such as advertising and propaganda. Thus, the internet and mobile technology have become a recognized platform for mass media. In our jurisdiction, the Tobacco Regulation Act of 2003 specifically includes the internet in the definition of 'mass media.'

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Moreover, your letter states that Komli intends to provide a digital platform to third-party websites to sell and monetize online inventory. Although Komli will not own or operate any online media outlet nor will affiliate with any internet service provider, online retailer or social networking site and will merely act as middleman by bringing together the product manufacturers and third-party websites, it will provide an online platform intended to increase the sale of a particular product. In SEC Opinion No. 12-16 this Commission opines that **if the corporation is engaged in the operation of a voucher platform on the internet with the purpose of increasing the sales of a particular product or service, it in effect disseminates information to the general public through the internet and is thus considered a mass media entity subject to the requirement of paragraph 1, Section 11, Article XVI of the 1987 Constitution and list A (1) of Executive Order No. 858.**"[13]

Subsequently, the Commission opined that the act of subleasing advertising space or structure such as billboards, electronic LED displays and other fixed or movable structures where advertising can be displayed, is well within the activities of mass media, and clarified that mass media is not limited to physical structures but includes the internet where a platform may offer the digital space for the dissemination of information, thusly:

To reiterate the stand of the Commission, the act of subleasing the advertising space or structure to others is well within the activity of a mass media entity for it still provides a medium to disseminate or convey advertising messages to the public.

The second activity (i.e., "to lease digital space from media owners, invest in technologies and serve clients by subleasing digital space to post their advertisements") also falls within the purview of mass media. The Commission already discussed in its previous opinions that platforms for mass media are not limited to the physical structures and printed materials. It covers other forms of communication and platforms such as the internet.[14]

C. Application.

The opinions of the Commission have been consistent in highlighting that the distinctive feature of an entity engaging in mass media activities, per DOJ Opinions, is the dissemination of information to the public or a portion thereof and that creation or editorial control of content is not an indispensable feature of an entity to be considered engaging in mass media.

In ***SEC-OGC Opinion No. 17-07,***[15] we opined that:

As opined by the Department of Justice, the term "mass media" in the Constitution refers to any medium of communication designed to reach the masses and that tends to set the standards, ideals and aims of the masses, the distinctive characteristic of which is the dissemination of information and ideas to the public, or a portion thereof.

Audiowav is not merely a provider of technological solutions *per se*.Rather, through its proprietary technology, *i.e.*,the WavSight, WavSound and WavSphere, Audiowav provides its clients with **a digital platform** to reach out to its target market and convey to them customized messages and point-of-purchase advertising through digital media signages and/or the audio playback thereof. These messages and advertising content, **although not created by Audiowav itself**, are disseminated by Audiowav through a digital platform which it provides to its clients, and which is specifically made accessible through compatible Audiowav devices, which are produced in conjunction with the said business model.

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[11] Emphasis and underscoring supplied.
[12] Supra Note 6.
[13] Emphasis supplied.
[14] SEC-OGC Opinion No. 16-21 dated 31 August 2016 addressed to Bernaldo Directo & Po Law Offices.,
[15] SEC-OGC Opinion No. 17-07, dated 24 July 2017, addressed to Gorriceta Africa Cauton & Saavedra. Emphasis Supplied.

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Second, **<u>the corporation need not be the creator of the message/information to be considered as a mass media</u>** entity. As opined by the Commission in SEC-OGC Opinion No. 16-21, the mere act of subleasing digital space to clients who will in turn use the same for advertising, is "considered as providing a medium to disseminate the advertisements and messages, thus engaging in mass media."

Dissemination being the distinctive feature, mere control over the digital platform as a medium to disseminate ideas is sufficient.

The ownership and operation of the platform implies that one has the power and right to choose who can use it and by extension, how it can be used and what can be communicated. In short, what is imperative is the practical and legal ability to control the communication. By disseminating the information, in effect, one has agreed to its communication, in exercise of such right.

This principle especially rings true in the case of billboards which constitute mass media.[16] Billboard owners are considered mass media despite having no editorial control over what is presented on the billboard itself. This may also be said of advertising pages or spaces of print and broadcast media.

Further, digital platform owners now have a more direct control mechanism that may significantly affect content. An example of this is when websites that provide platforms for UGC impose community standards, i.e. Youtube and Facebook, to users of the platform.

In this connection, we have already clarified that the internet per se is not mass media, to wit:

> It should be clarified, however, that the foregoing Opinion did not conclude that the internet *per se* is mass media, rather, that the internet may be used as a digital platform or medium to disseminate information and ideas to the public, in which case, such activity will constitute a mass media undertaking. This is consistent with subsequent opinions of the Commission finding the following to be mass media activities: (a) SEC-OGC Opinion No. 15-10 dated 02 September 2015, with respect to the use of the internet for the marketing and operation of a voucher platform; and (b) SEC-OGC Opinion No. 16-21 dated 31 August 2016, on the subleasing of digital space in the internet to be used as a platform for online advertising. Thus, it is not the internet *per se*,but how the same is utilized, that determines whether a particular undertaking constitutes mass media. [17]

Thus, it is erroneous to conflate internet business and internet per se in citing DOJ Opinion No. 40, Series of 1998. In the aforementioned opinion, the DOJ clearly answered the query on whether internet business, not internet per se, constitutes mass media, thusly:

> This has reference to your request for a "definite ruling" on whether the **<u>internet business</u>** constitutes mass media, which should not be given to foreign investors pursuant to Section II (1), Article XVI of the 1987 Constitution.
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> x x x x x x x x x
>
> In Opinion No. 24, s. 1986, this Department, construing an identical provision in the 1973 Constitution, said:
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> "The term 'mass media' in the Constitution refers to any medium of communication, a newspaper, radio, motion pictures, television, designed to reach the masses and that tends to set the standards, ideals and aims of the masses (Op. No. 163, s. 1973). The distinctive features of any mass media undertaking is the dissemination of information and ideas to the public, or a portion thereof (Op. No. 120, s. 1982)..." (reiterated in Op. No. 10, s. 1996).
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> x x x x x x x x x
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> The rationale is because in Internet business, the Internet access provider merely serves as carrier for transmitting messages. It does not create the messages/information **<u>nor</u>** transmit the messages/information to the general public, as mass media do, and the publication of the messages/information or stories carried by the Internet and transmitted to the computer owner, thru the access provider, is decided by the sender or the inter-linked networks.[18]

[16] See P.D. No. 1018 and R.A. No. 7394; See also DOJ Opinion No. 11, s. 2007 dated March 5, 2007 addressed to Mr. Frank Abueva, citing Secretary of Justice Op. No. 24, s. 1986 reiterated in Ops. No. 10, s. 1996; No. 40, s. 1998; and No. 2, s. 2002.
[17] Supra Note 15.
[18] DOJ Opinion No. 40, s. of 1998 addressed to Mr. Perfecto Yasay, Jr., Emphasis and underscoring supplied.

We previously opined:

> Your letter argued that Audiowav is not a mass media company insofar as DOJ Opinion No. 40 series of 1998 allegedly pronounced that the internet is not a form of mass media. DOJ Opinion No. 40, which you invoke is, to our view, not *apropos* because it involves an entity, what is called therein as an Internet Access Provider (IAP),which merely connects or offers to the owner of a computer the services of inter-connecting the latter's computer to a network of computers thereby giving him access to said services offered by the Internet, and does not appear to utilize the internet as a digital platform or medium to disseminate information and ideas to the public. As discussed above, it is not the internet *per se*,but how the same is used, that determines whether an entity may be considered mass media.
>
> In the case of Audiowav, the services it offers to its clients do not simply consist in connecting one user to the internet or to a network of computers, but the provision of a proprietary technology through which information, in the form of messages and advertisements, are transmitted to its clients. Thus, Audiowav is, insofar as the WavSight, WavSound and WavSphere products/services are concerned, engaged in mass media and is therefore required under the Constitution to be wholly-owned by Filipinos.[19]

Indeed, the DOJ has never taken the position that the internet can never be mass media. To reiterate, it is the internet business that was referred to by the DOJ that does not constitute mass media, not the internet per se. Indeed, an internet business is one that is engaged in the business of offering to the owner of a computer the services of interconnecting the latter's computer to a network of computers thereby giving him access to said services offered by the internet. Otherwise stated, the service rendered is only to give access to the internet and that the business is not related to the internet as a medium or platform.

From the foregoing, there is no basis to say that there exists confusion as to mass media and telecommunications as the later can be said to be akin to internet service providers.

At any rate, it is worthy to stress that while you specifically mentioned the platform's content to be about the items sold, you did not qualify or limit it to such UGC only, thereby allowing other types of content on the platform.

While the Commission appreciates the outlining of PIVOI's business in your letter, we deem it prudent not to issue a categorical opinion/ruling as an online platform content can be variable and mutable. We find it proper to provide guidance instead.[20]

In order for an online platform operator to not be deemed as engaging in mass media activities:

a. There is no pervasive or indiscriminate display to the general public of any promotional materials or advertisements on the products or services being offered by the third-party clients or even the platform itself;
b. Only the following information may be made available on the platform:
    i. Enumeration of the services offered by the platform itself;
    ii. Instruction on how to use the said platform;
    iii. Enumeration of the third-party partner and this shall only be limited to the listing of the name or logo of the client; and
    iv. Any other information on the platform required to be disclosed by any law or regulatory measures.
c. The disclosure of the products and services offered by its client is only for the purpose of completing the transaction enabled by the platform.[21]

D. PIVOI is not engaged in advertising.

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[19] Supra Note 15.
[20] SEC-OGC Opinion No. 18-21 dated 28 November 2018 addressed to Angelito M. Villanueva
[21] Supra Note 20.

Under Article 4 (a) of R.A. No. 7394,[22] an advertisement is defined as, "the prepared and through any form of mass medium, subsequently applied, disseminated or circulated advertising matter." In relation thereto, Article 4 (b) of the same law defines "advertising," as the business of conceptualizing, presenting, or making available to the public, through any form of mass media, fact, data or information about the attributes, features, quality or availability of consumer products, services or credit."

Also, of note are the previous opinions of the Commission where an advertising agency was distinguished from a mass media entity, thus:

> x x x "The function of advertising agencies is to serve as agents or counsellors of advertisers by writing, preparing, or producing the commercial messages or materials by advertisers in selling their goods and services, and by selecting and recommending the medium or media to be used as the vehicle for disseminating such messages to the public. Advertising agencies do not actually disseminate the materials they prepare as they have to utilize or avail of the facilities of mass media, i.e., newspapers, radio, television, etc., for this purpose. Advertising agencies falling within this concept are not mass media, considering that they do not operate or control any medium of communication designed to reach or influence the masses, although the activities of such agencies, by their nature, are closely related to those of mass media.
>
> However, where the advertising agency actually disseminates information or operates, controls or otherwise engages in the business of mass media, a specific example of which is an outdoor advertising firm which sells billboard space to advertisers, then such advertising agencies would fall within the purview of the constitutional limitation.[23]

Verily, in consideration of the definition and interpretation of what constitutes engaging in advertising, we are of the opinion that PIVOI is not engaged in advertising as the business does not include the conceptualization, creation, preparation, and production of the content put on the platform itself, or the advising of clients as to what medium of dissemination is to be used.

It shall be understood that the foregoing opinion is rendered based solely on the facts, circumstances and documents disclosed/submitted and relevant solely to the particular issue raised therein. It shall not be used in the nature of a standing rule binding upon the Commission in other cases or upon the courts whether of similar or dissimilar circumstances.[24] If, upon further inquiry or investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered void.

Please be guided accordingly.

Very truly yours

Romuald C. Padilla
General Counsel

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[22] Supra Note 4.
[23] Supra Notes 6 & 10.
[24] Paragraph 7, SEC Memorandum Circular No. 15, Series of 2003.